

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO. 1520 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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Revabhai Becharbhai Solanik

VERSUS

Patel Somabhai Shankerbhai

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Appearance:

Mr.Muktesh Patel for petitioner

Mr.A.S.Trivedi for respondent

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Coram: MR.JUSTICE S.K. Keshote,J

Date of decision:30/12/1999

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. The learned counsel for the petitioners has argued

the matter as if this court is sitting as a trial court or the first appellate court. The learned counsel for the petitioners is totally oblivious of the fact that this revision application has been directed by petitioners against the order passed by the first appellate court below ex.5 in Civil Misc. Appeal and the appeal is pending.

#. The learned for the petitioners contended that no alternate way is available to the petitioners to go to the fields except the way passing through the disputed Survey No.511/1 which admittedly belongs to the defendant. Before this court, the petitioners filed affidavit to give out that no alternate way is available but during the course of arguments, I find that the learned counsel for the petitioners has not very specifically disputed this fact, but what he contends that alternate way is from other village and it is a longer way. The respondent filed affidavit-in-reply to the affidavit of the petitioner and denied this fact. They have come up with the case that the petitioners have alternate way available but to harass the respondent they have not only filed the suit but this revision application also. The defendant-respondent has gone to the extent that the petitioners have got the interim relief from this court in their favour by filing false affidavit. He also produced on record of this civil revision application for perusal of this court, the pleadings of the parties and he referred to the written statement where what it is contended that plea has been taken that the petitioners have alternative way to reach to their field.

#. It is not the matter to be decided finally whether the plaintiffs have alternative way or not as the matter is sub-judice before the first appellate court. However, in the facts of the present case and more so where the first appellate court has power to grant interim relief, at this stage, no interference is called for in that order.

#. The learned counsel for the petitioners contended that the defendant-respondent has committed contempt of the order of this court.

#. I do not find any merits in this contention. The order passed by this court is an exparte order and in case for violation thereof any contempt proceeding is drawn against the respondent, it will amount to punishing a person 'unheard'. It is a case where the respondent has stated that by filing false affidavit, this order has

been obtained by petitioners. In these facts, otherwise also, it is not justified and reasonable and in the interest of justice that for alleged breach of this order of this court, which has been passed exparte, any contempt proceeding has to be drawn against respondent. Only interim relief has been granted by the first appellate court and instead of coming to this court against this order, the petitioners should have approached to the first appellate court for early disposal of ex.5 or appeal itself. At this stage, it is difficult to say that the first appellate court has committed any material irregularity in exercise of its jurisdiction in passing the impugned order.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief earlier granted by this court stands vacated. No order as to costs. The learned first appellate court is directed to dispose of the appeal filed by respondent within a period of one month from the date of receipt of writ of this order.

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[sunil]